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FCC MAIL ROOM

March 22, 1999

Ms. Magalie Roman Salas
Secretary of Commission
Federal Communications Commission,
1919 M Street, Room 222
Washington, DC 20554

RE: Ex-Parte Letter Docket #96-115 - Section 222(e)

Dear Secretary Salas,

My company has filed an anti-trust lawsuit against TDS/Telcom-Camden Telephone Company in Brunswick, Georgia. Also included in the same suit is an allegation for violation of Section 222(e) of the 1996 Telecommunications Act. The suit was filed in July of 1996. After the passage of the new law, it was anticipated the FCC would quickly issue an order that would define the terms: non discrimination; unbundled; and most importantly "Reasonable Rates", as set forth in Section 222(e). A year ago, the defendant in my case filed a motion to stay the proceedings in our case before the Federal Court, awaiting such a ruling by the FCC. It was expected the FCC would be the fast or short track to determine what is a "reasonable rate". This is a major part of my case and I cannot proceed without this ruling.

As it stands now, it is more than three years since Section 222(e) become law. Neither I nor the consumer public have received what was expected to be a quick, simple to decide and timely ruling on this matter by the FCC as mandated by congress. It is imperative the FCC address this serious issue so that I might move on with my case and not be forced to incur additional unnecessary legal expense nor continue to suffer damages due to the continuous illegal conduct of the defendants in this case as well as other LECs like BellSouth.

When I first contacted the defendants in my case, I was told the price per listing was \$3 each. They have admitted to charging \$2 per listings. After the passage of Section 222(e), they quoted 49 cents per listing. Through discovery we have uncovered the fact their actual costs to provide these essential listings was less than \$200 from their service bureau. At 49 cents per listing, they enjoy a profit margin of more than 3900%. They continue to discriminate against me by denying me all the same information and update service they provide to their yellow pages publisher. Such an update service would allow

me to have equal access to new subscriber connections information for the distribution of my directory. An extremely important part of the distribution to the consumer market. Equally important, they, as well as BellSouth and all other LECs in my area, continue to deny local consumers the right to choose between my competitive directory and their monopoly directory. They have no right to be the one to make such a choice for consumers. This simple fact is exploited and even boasted about by telephone company yellow pages sales representatives in the course of selling to advertisers and potential advertisers in both the local and national markets. This conduct is intentional to discredit my company in the process of selling yellow pages advertising and as a marketing scheme that is blatantly unfair and extremely damaging to me in the market place. Without the FCC enforcing existing laws and regulations, I can do nothing and they continue to enjoy the profits, benefits and advantages of their illegal conduct, while I continue to suffer damages.

This illegal conduct, by these regulated utility monopolies, is standard normal conduct, among all the telephone companies where I compete for yellow pages advertising. Here is another example of outrageous rates I am forced to deal with. BellSouth sells me listings at 4 cents per listing. A cost study by BellSouth for providing this service to publishers was provided to the Florida Public Service Commission during their Directory Publishers Database Services (DPDS) tariff filing. The cost study revealed BellSouth's cost per listing was on 003 cents per listing. That's 3 mills. At 4 cents per listing, BellSouth illegally enjoys an outrageous and unreasonable 1233% return on their actual costs to provide this essential service, which is a mere by product of their monopoly franchise to provide local telephone service and is not available to me from any other source.

Another major competitor is Alltel, who for many years, would not even respond to my many written requests for listings, even by registered mail. Finally after several years, I was able to get an answer from them and was quoted the insulting rate of 98 cents per listing. No negotiations, just take it or leave it. To my knowledge, they are still selling their listings at the insulting rate of 98 cents each.

This continued anti-competitive behavior by all LECs within the markets where I publish telephone directories, is because they can get away with denying me equal access at a reasonable rate to the same essential information they readily provide to their yellow pages publishers. This is exactly the reason why congress included the specific language of Section 222(e), to be included in the 1996 Telecommunication Act. The clear intent of congress was for the FCC, as the regulators of such monopolists, would have the expertise to define exactly what a reasonable rate would be for LECs to charge a competitor for such essential information not available from any other source other than the LEC. The FCC was expected to rule on this crucial Section in a timely manner. The FCC clearly has not acted on a timely basis to perform its duties as mandated by congress, to do so under Section 222(e).

I continue to be harmed and damaged in the yellow pages markets where I compete against local exchange carriers. This is simply due to their continued denial to give me equal access to this essential information that is not available from any other source. These LECs are clearly leveraging their monopoly power and control of essential information to illegally strengthen and maintain their monopoly share of yellow pages advertising revenues.

Because of the many years of harm and damages I have suffered at the hands of LECs, I am now attempting to seek relief of the on going illegal conduct, by filing an anti-trust violation case in Federal Court. Unfortunately, due to the lack of timely action by the FCC, to issue an order concerning Section 222(e), I am now wrongfully being denied due process in Federal court.

The FCC must address this issue immediately to correct the continued on going harm and damages I suffer from LECs. It is equally essential the ruling or order be based on the reasonable long established standard of setting a rate for monopoly provided services, based on the incremental cost for the monopoly provider to deliver that service, with a reasonable return on their investment. In my case, we can clearly show non refutable evidence by both BellSouth and TDS/Telcom-Camden Telephone Company, just how minuscule their actual costs are to provide complete subscriber listing information. Such evidence also shows just how outrageously high their profits are on the rates they charge. Their rates aren't even set by any reasonable standard of fair market value. Their outrageous rates, bundling, discrimination by denial of certain essential information and the consequential scheming with their publishers to share in vast profits of yellow pages advertising revenue, is wrong and illegal. Certainly, with all of today's advanced technology available to all LECs, their costs to provide all necessary and essential service has got to be comparable to or less, to the costs discovered from both BellSouth and the defendants in my case. The only thing missing is the responsible regulators to enforce the existing laws to stop such illegal conduct.

It should be abundantly clear, this is not an issue over yellow pages. It is an issue of illegal conduct that leads directly to outrageous profits and the market share percentages of yellow pages advertising revenue as a direct result of such illegal conduct. LECs receive such revenues from their yellow pages advertising sales agents mostly because they are given unfair advantage over competitors. Complete, accurate and up to date subscriber listing information on an unbundled and timely basis, equal to that furnished to their yellow pages partners, is essential in the course of publishing any telephone directory which also includes complete and accurate content as well as complete, timely and effective distribution. In any competitive situation or market where one product is superior to another or clearly preferred by consumers over another, due solely to business acumen, efforts or creativity of one competitor over another, is what free enterprise is all about. Being able to compete on an equal and level playing field is essential to the free enterprise system. However, any time one competitor enjoys an unfair advantage over their competitors they have no such rights too, due to any special circumstances, such as those enjoyed by all LEC's monopolists, with their access and control of essential subscriber listing information and then denying equal access to that same essential information by it's competitors, in an unregulated market, it is unlawful and must not be tolerated in any open and free market place. Everyone suffers and pays from such one sided unfair market conditions. Why can't I get some relief over this illegal conduct. After all, it is illegal conduct and a simple matter of right and wrong. Don't I have the same rights?

Clearly, my company's 13 years of attempting to compete against these yellow and white pages directories, that are published by and for monopolist LECs, that receive such vast sums of revenue that are generated by their yellow pages advertising sales agents, has at

the best of times, had very limited success. The only course of actions available to me outside of wasting my time trying to negotiate and reasonably deal with these predator monopolists, is either through the courts or regulatory agencies like the FCC. It is obvious to any reasonable person, in my position, the foot dragging delays by the FCC in issuing a fair ruling or order on this matter, are drastically hindering my ability to get relief from either of the only two sources available to me. It is the long protracted bureaucratic and legal processes of both the courts and regulators, especially in my pending case, that not only causes continued harm and damages to me, but allows the LECs, like the defendants in my case, Alltel and BellSouth to perpetuate their unlawful conduct while enjoying continued undeserved profits and unfair advantages from such illegal conduct.

As an example of the continuous anti-competitive and illegal conduct by LECs, I offer this recent example from BellSouth. As recently as January 28, 1999, I received a letter from BellSouth that served as a notice they were "changing" the rates for a weekly business activity report service I received from them. Paraphrasing what this notice said was BellSouth was increasing rates from 9 cents per business listed on the weekly activity report, to 006 cents (6 mills) per listing. The dramatic increase came as a result of them charging for the activity listings delivered, at the new rate of 006 cents calculated on **all** the listings in that particular central office/market, including residential and business, regardless of the amount of business activity listings furnished to me. They were still delivering only the same business activity report I had always received for only business subscribers that had account activity. Absolutely nothing had changed except increasing their rates by 400%. The basis and explanation offered by BellSouth was *to bring their rates for this service in line with their "General Subscriber Tariffs" for all states where they provided services*. This statement was at best misrepresenting. In all probability, it was an intentional lie without any care or fear of accountability for such blatant illegal conduct of bundling. BellSouth has no "General Subscriber Tariff" regarding subscriber listings in Georgia as well as several other states where they operate. The simple truth is they just decided to raise the rates by bundling the information based on all listings in that database, without delivering any additional information, service or value. Bottom line is there is absolutely nothing I can do about it. And it seems to me, no one else particularly cares to do anything about it either....certainly not the FCC by their cavalier approach to this blatant "in your face conduct" by BellSouth. BellSouth's conduct in this case is that of thugs, gangsters and racketeers.

Of course I could file an action against them in the courts or file a complaint with the FCC. But why should I waste the time and money? I've already done that and look where I stand now.....stuck in the middle of nowhere....,I can't afford the costly and lengthy process. It appears to me, I have nowhere to turn. It would seem to be only another exercise in futility. So, BellSouth has just cavalierly raised my rates by over 400% and I can either take it or leave it. Does anyone care? BellSouth and other LECs thrive on the apathy and foot dragging non-action by regulators. From my simple point of view, regulators are no more than accomplices to such continued illegal conduct by LECs like BellSouth.

While there is much discussion at the FCC about privacy issues over subscriber information, for the purposes of Section 222(e), it is essential for distribution, that a competitive publisher have equal access to all new connects/subscribers information, even if they are confidential by way of being non published or non listed. In order to satisfy this

need for equal access to all new residential connects, for as long as the LEC distributes its directory to such subscriber, they should either offer to include a competitor's directory at their same costs, with the distribution of their own directory or provide the confidential new subscriber information by way of either a mailing label or physical address only without any names or phone numbers included. It is essential all this information be made available on a timely basis so that a competitors directory, like mine, would arrive at or about the same time any LEC directory is delivered to the new residential subscriber.

A timely, complete, fair and reasonable ruling that would level the playing field, by the FCC on Section 222(e) is a must and is needed right now, without any further delay. In fairness to me and many, many others like me, that have endured and suffered for so long through such unlawful and intentional wrongful conduct by LECs, the FCC has got to take into full account their own role of doing nothing for three years and the effect it has had with all this ongoing intentional anti-competitive conduct. It is imperative all these factors be considered when determining just what this important ruling should be. Certainly, any consideration to make the ruling retroactive from at least February, 1996 should be of major consideration. Rather than force an LECs to issue refunds, they might be made to issue credits toward future purchases of subscriber listing information at the new, unbundled reasonable rates. Regardless, the final ruling must be one that both satisfies the letter and intent of Section 222(e) as well as to provide immediate relief for me and many others like me to be able to compete equally and fairly on a level playing field against these LEC monopolists. This issue should not be a political trade off or pawn over other more or less serious consumer issues. Let Section 222(e) stand on its own the way it was intended.

Respectfully,



Gerry Screven

cc: Docket # 96-115
Chairman Willam Kennard, FCC
Commissioner Susan Ness, FCC
Commissioner Harold Furchtgott-Roth, FCC
Commissioner Michael Powell, FCC
Commissioner Gloria Tristani, FCC
Ms. Kathy Brown, FCC Staff
Mr. William Kehoe, Planning & Policy Div. CCB, FCC
Senator Max Cleland
Senator Paul Coverdell
Chairman Robert Baker, Georgia PSC
Mr. Duane Ackerman, BellSouth Corp
And several others